

JUN 30 2016

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

UNITED STATES OF AMERICA,)	CASE NO. 7:06CR00002
)	(CASE NO. 7:16CV81091)
)	
v.)	<u>MEMORANDUM OPINION</u>
)	
)	
HARVEY LEE HAYES, JR.,)	By: Hon. Glen E. Conrad
)	Chief United States District Judge
Defendant.)	

Harvey Lee Hayes, Jr., through counsel appointed under Standing Order 2015-5, moves to withdraw his motion to vacate, set aside or correct the sentence under 28 U.S.C. § 2255. Upon review of the motion and court records, the court grants the motion to withdraw.

Hayes, through counsel, filed this § 2255 motion on June 27, 2016, seeking sentencing relief under Johnson v. United States, ___U.S.___, 135 S. Ct. 2551 (2015). Hayes also filed a motion to stay the § 2255 motion until the United States Court of Appeals for the Fourth Circuit decided his then-pending motion under 28 U.S.C. § 2255(h) for certification to file a successive § 2255 motion. On June 28, 2016, the Fourth Circuit denied Hayes' motion for certification under § 2255(h) upon finding that "the holding in Johnson would entitle Hayes to no relief." (ECF No. 106.) Accordingly, counsel moves to withdraw Hayes' § 2255 motion and the motion to stay.

This court may consider a second or successive § 2255 motion only upon specific certification from the Fourth Circuit that the claims in the motion meet certain criteria. See § 2255(h). Court records indicate that Hayes previously filed § 2255 motions concerning this same conviction and sentence. See, e.g., United States v. Hayes, Case No. 7:10CV80278, 2010 WL 3835203 (W.D. Va. Sept. 30, 2010) (dismissing § 2255 motion as untimely), appeal

dismissed, 408 F. App'x 758 (4th Cir. Jan. 21, 2011). Thus, his current § 2255 motion is a second or successive one. Given the Fourth Circuit's denial of Hayes' motion for certification to file a second or successive § 2255 motion, this court has no jurisdiction to address his § claims under Johnson.

For the stated reasons, the court will grant the motion to withdraw. A separate order will be entered this day.

ENTER: This 29th day of June, 2016.



Chief United States District Judge